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1 and costs incurred in defending the case at the trial level, defending the case on appeal,
2 and litigating certain post-appeal issues, including attorney's fees.¹

3 Wilson's main argument in defense of the fee claim is based upon the California
4 Supreme Court's decision in *Adoption of Joshua S.*, (2008) 42 Cal.4th 945, which, like
5 this case, involved a significant issue of public importance arising out of a published
6 opinion obtained as a result of civil litigation. In *Joshua S.* the Supreme Court assumed
7 that the requirements of CCP §1021.5 had otherwise been satisfied, but nevertheless
8 rejected a fee award against the respondent.

9 The Supreme Court concluded that the respondent was "not the type of party on
10 whom private attorney general fees were intended to be imposed" (*Joshua S.* 42 Cal.4th
11 at 953), because she had not been "responsible for the policy or practice adjudged to be
12 harmful to the public interest." *Joshua S.* 42 Cal.4th at 957. Because the meaning of the
13 phrases "not the type of party" and "harmful to the public interest" are not free from
14 doubt, a further explanation of the facts of *Joshua S.* is in order, as is a discussion of the
15 cases relied on by the Supreme Court.

16 *Joshua S.* involved the validation of a "second parent" adoption. Sharon and
17 Annette were in a committed relationship. Sharon was artificially inseminated and gave
18 birth to Joshua. Sharon gave her consent allowing Annette to adopt Joshua, with
19 Sharon retaining her parental rights. When the relationship deteriorated, Annette left
20 the home, and then filed a motion for an order of adoption. Sharon filed a motion to
21 withdraw her consent and to dismiss Annette's petition, arguing that the so-called
22 "second parent adoption" was invalid and contrary to public policy.

23 The Supreme Court found in favor of Annette on the merits, concluding that the
24 "second parent" adoption was lawful. As the prevailing party, Annette then filed a
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26 ¹ Wilson does not present any argument contesting the reasonableness of the claimed fees.
27 Moreover, the elements of CCP §1021.5 appear to have been met. Contrary to Wilson's argument, the
28 litigation did vindicate important public rights of a political committee, and it conferred a significant
benefit on the public in a published opinion upholding important First Amendment rights of political
parties and their members. *Wilson v. San Luis Obispo County Democratic Cent. Committee* 175
Cal.App.4th at 504-505. Indeed, the appeals court observed that, although the case was moot, it would
decide the question presented because the case involved issues of broad public interest that were likely to
recur. *Id.* at 496.

1 motion seeking attorney's fees pursuant to CCP §1021.5. The trial court awarded
2 \$92,049.45 in fees. The appeals court reversed, finding that the litigation did not
3 transcend Annette's personal interests.

4 Affirming the court of appeal on entirely different grounds, the Supreme Court
5 concluded that it is entirely appropriate to impose public interest attorney fees under
6 section 1021.5 on parties who have done something adversely affecting the public
7 interest. *Id.* at 954. Such a result, the Court concluded, was consistent with the
8 legislative intent of the CCP §1021.5 and the holding in *Connerly v. State Personnel*
9 *Board* (2006) 37 Cal 4th 1169, where the Supreme Court previously held that section
10 1021.5 fees should be assessed against parties "responsible for initiating and
11 maintaining actions or policies that are deemed harmful to the public interest and that
12 gave rise to the litigation." *Id.* at 956.

13 Applying these principles, the Supreme Court determined that Sharon was not
14 the type of party who should be assessed fees under the statute:

15 [W]e conclude that section 1021.5 was not intended to impose fees on an
16 individual seeking a judgment that determines only his or her private rights, but
17 who has done nothing to adversely affect the public interest other than being on
18 the losing side of an important appellate case. Because Sharon fits squarely into
19 this category, we affirm the Court of Appeal's judgment reversing the trial
20 court's attorney fee award. *Id.* at page 958.

21 Seeking to take itself outside this holding, the Central Committee argues that
22 Wilson was not merely seeking a determination of her private rights, but also seeking
23 broader relief with respect to removal of all members who had not been duly elected
24 under the Elections Code, as well as a ban on selecting new members except pursuant to
25 the Elections Code. There is merit to this contention. This Court's ruling recognized
26 these broader arguments asserted by Wilson and ruled upon them. Clearly, Wilson's
27 First Amended Writ Petition tendered issues that went beyond her private rights and
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1 were intended to affect broader practices of the Central Committee in selecting its
2 members. Wilson's counsel does not contend otherwise.

3 The critical question, though, is whether a broader challenge to the Central
4 Committee election practices dictates a result different from *Joshua S.* Stated another
5 way, can it be said that Wilson's broader litigation goals were detrimental to the public
6 interest such that an award of fees is appropriate against her? *Joshua S.* looked to
7 earlier precedent in resolving this issue. *Id.* at 957; *See, e.g., Wal-Mart Real Estate*
8 *Business Trust v. City Council of San Marcos* (2005) 132 Cal.App.4th 614; *Hull v.*
9 *Rossi* (1993) 13 Cal.App.4th 1763; *County of San Luis Obispo v. Abalone Alliance*
10 (1986) 178 Cal.App.3d 848. A further look at these cases is warranted.

11 *Wal-Mart Real Estate Business Trust* involved Wal-Mart's unsuccessful pre-
12 election challenge to a referendum concerning development of a Wal-Mart store. After
13 successfully opposing the petition, the City of San Marcos obtained fees on appeal
14 against Wal-Mart because the appellant court concluded that it was important not "to
15 disrupt the electoral process by preventing the exercise of the people's franchise, in the
16 absence of some clear showing in invalidity." *Id.* at 619. From the perspective of
17 *Joshua S.*, the key distinction was that pre-election challenges disrupt the electoral
18 process and disserve the public interest. *Id.* at 621.

19 Similarly, *Hull v. Rossi* (1993) 13 Cal.App.4th 1763, involved an award of fees
20 under CCP §1021.5 to a party who successfully defended an effort to restrict several
21 local ballot initiatives:

22 Appellants assert that the "overwhelming result of the litigation was to reject
23 respondents' efforts at censorship and vindicate appellants' rights to present, and
24 the public's right to receive, information and argument concerning two
25 controversial ballot initiatives." Appellants' argument has merit. In defending
26 the action, they achieved a victory that was substantial and which qualifies
27 appellants as prevailing parties under section 1021.5. *Id.* at 1768.

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1 *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848,
2 involved an award of fees to protesters who successfully defended the County's effort
3 to recoup security and police costs incurred during a blockade protest at the Diablo
4 Nuclear Power Plant. The trial court sustained the protester's demurrer to the County
5 complaint with prejudice.

6 Plaintiffs also urge that because they disclaimed any intent to interfere with
7 lawful protest, it follows that defendants' efforts were unnecessary to protect the
8 lawful right to protest. Plaintiffs' intentions, however, are irrelevant. As the
9 trial court concluded, the *inevitable effect of the continuation of this lawsuit*
10 *would be to chill large protests by substantially escalating the risks involved.* A
11 person or organization contemplating a mass protest in which civil disobedience
12 is involved might accept the risk of conviction of a misdemeanor such as
13 trespass. If this suit were successful, however, the risks of monetary loss, jointly
14 and severally imposed on each defendant, could be enormous, and therefore
15 unacceptable. *Id.* at 866-867 (emphasis added)

16 The Supreme Court's interpretation of *Wal-Mart*, *Hull*, and *Abalone Alliance*,
17 and its discussion of the issue in *Joshua S.*, strongly suggest that the trial court must
18 examine the litigation goals, as well as other relevant factors, in determining whether
19 bringing or defending litigation can be termed detrimental to the public interest.

20 On the one hand, the Central Committee describes Wilson as someone working
21 against the public interest, attempting to throw the Central Committee into chaos, and
22 interfering with its internal affairs. On the other hand, Wilson's counsel describes her as
23 someone championing individual freedom of association, an enforcer of the Elections
24 Code, and a defender of due process of law. To a certain extent, as beauty is to the
25 beholder, so is a litigation goal either detrimental to, or in furtherance of, the public
26 interest.

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1 On balance, however, the Court cannot conclude that Wilson's litigation was
2 "adverse to the public interest" as that term is used in *Joshua S.* As an elected member
3 of the Central Committee, Wilson was fundamentally attempting to stay in office, and
4 to enforce the Central Committee's compliance with applicable provisions of the
5 Elections Code.

6 Stripped of the colorful rhetoric, this case implicated competing statutory and
7 constitutional interests, with Wilson relying upon various provisions of the Elections
8 Code, and the Central Committee asserting its constitutional right of association to
9 control its own form of governance. Although the balance tipped in favor of the Central
10 Committee, there was nothing inherently "wrong" with Wilson's efforts to prevent her
11 removal. Her litigation is qualitatively different from *Wal-Mart, Hull* and *Abalone*
12 *Alliance*, where fees were imposed.

13 While arguably fitting the description of "gadfly," the Court cannot find that
14 Wilson specifically engaged in any action that compromised important public rights, or
15 thwarted important public policy. Nor was she responsible for a policy or practice
16 harmful to the public interest. Given the absence of any harmful conduct or practice, an
17 award of over \$100,000 in attorneys' fees against someone attempting to enforce the
18 provisions of the Election Code would be unfair, and would also have a chilling effect
19 on meaningful participation in the political process.²

20 Fundamentally, Wilson's lawsuit was not "responsible for [any] policy or
21 practice adjudged to be harmful to the public interest." *Joshua S.* 42 Cal.4th at 957.

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28 ² The result might well be different, for example, if there were evidence that Wilson was a plant
of another political party, or a stalking horse designed to impede and disrupt the Central Committee's
governance structure based upon some ulterior motive.

1 Nor is Wilson, under the law, "the type of party on whom private attorney general fees
2 were intended to be imposed." *Id.* at 953. Accordingly, the Central Committee's motion
3 for attorneys' fees is denied.

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5 DATED: April 19, 2010

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CHARLES S. CRANDALL
7 Judge of the Superior Court

8 CSC/lk

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